

# EXHIBIT 8

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 COUNTY OF ALAMEDA

3 BEFORE THE HONORABLE BRAD SELIGMAN

4 DEPARTMENT 23

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6 TERESA ELIZABETH LEAVITT  
7 and DEAN J. MCELROY,

8 Plaintiffs,

No. RG17882401

9 vs.

10 JOHNSON & JOHNSON, et  
11 al.,

12 Defendants.  
\_\_\_\_\_ /

13 REPORTER'S TRANSCRIPT OF TRIAL

14 (WILLIAM E. LONGO, Ph.D.)

15 Thursday, February 7, 2019

16 Full Session

17  
18  
19 Taken before EARLY K. LANGLEY  
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21 CSR No. 3537

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<p>1 --oOo-- 2 P R O C E E D I N G S 3 --oOo-- 4 Thursday, February 7, 2019 - 8:49 a.m. 5 (Morning Session) 6 (Whereupon, the following proceedings were held 7 outside the presence of the jury:) 8 THE COURT: Good morning, everybody. So what 9 do we have? 10 MR. MAIMON: Yes, Your Honor. 11 In anticipation of Dr. Longo's testimony this 12 morning, I met and conferred with counsel for J&amp;J and 13 confirmed with him that I was not going to deal with 14 talcs that are not at issue in this case that Dr. Longo 15 may have tested, and specifically, some of the talcs 16 that Dr. Longo tested deal with Chinese talc that 17 Johnson &amp; Johnson sourced for their post 2003 products 18 pursuant to the Court's ruling pretrial we've avoided 19 all of the Chinese talc. So we're not going to go into 20 it. 21 I did note that in the cross-examination of 22 Mr. Poye the other day, there was a report that he had 23 issued to Dr. Longo that dealt with 79 samples. It 24 wasn't identified as such, but some of those samples I 25 happen to know because I've dealt -- defended</p>	<p>1 switchover, it sounded like, from the testimony of 2 Dr. Hopkins that Mr. Maimon elicited. So they have 3 heard about Chinese talc being used in lieu of Korean 4 talc at some point.</p> <p>5 And then, finally, there were -- there was much 6 testimony from Dr. Hopkins with respect to what 7 Johnson &amp; Johnson was considering in the 2000s with 8 respect to warnings. There were demonstrative -- there 9 were exhibits that were entered from, I think like 2013 10 or 2014 where they were discussing warnings, there was 11 a PowerPoint slide that was shown from Johnson &amp; 12 Johnson. So, to the extent there is an issue about 13 whether Johnson &amp; Johnson should have warned or not 14 warned, it's relevant for the jury to know that there 15 is testing that has been done in the 2000s, which is 16 Chinese talc, at least after 2003, that suggests there 17 is no need to warn because there is no asbestos in the 18 Chinese talc.</p> <p>19 MR. MAIMON: So taking that in order, 20 Your Honor, I think that it is proper to question 21 Dr. Longo about the control bottle that he used, the 22 same way that they cross-examined Mr. Poye about that. 23 And I don't have any objection to that.</p> <p>24 With regard to the duty to warn, the duty to 25 warn ends at the last exposure, which is 1998 in this</p>

<p style="text-align: right;">Page 146</p> <p>1 Your Honor. That's one. We haven't heard from her.  2 So if she does end up coming, that alleviates some of  3 the issue.  4 That does not alleviate one continuing issue  5 that it sounds like Dr. Egilman -- excuse me -- that  6 Dr...  7 MR. SATTERLEY: Longo.  8 MR. RICHMAN: Thank you.  9 -- Dr. Longo was beginning to give and that  10 Dr. Egilman was starting to tread on.  11 What appears is there is this overall testimony  12 that, from the day of birth until 1968, she was exposed  13 to Korean talc and that there is absolutely no factual  14 foundation to support that opinion.  15 As Mr. Brown had to point out with Dr. Egilman,  16 the testimony of Ms. Susan Leavitt -- and this is --  17 I'm citing page 21 of her deposition.  18 "Question:" This is line 15. "Do you know  19 where the Johnson's Baby Powder that you purchased at  20 Sangley Point came from?  21 "Answer: It came from the United States."  22 She says on page 19, "Now, where did you  23 purchase the baby powder that you used on Terry when  24 she was a baby in the Philippines.  25 "Answer: When my husband was in the military</p>	<p style="text-align: right;">Page 148</p> <p>1 how long it was used. There would be -- there's no  2 evidence of that and it's total hearsay.  3 So -- and there's no way for us to unring the  4 bell with Dr. Longo when he's just going to say, oh,  5 that's what the testimony is, when there is no factual  6 foundation to support that, even if she does testify.  7 And that's the issue.  8 MR. SATTERLEY: Your Honor, Mr. Richman and  9 Mr. Brown have been admitted here pro hac vice. And I  10 would expect that they would follow the rules and the  11 law of California and be candid with the Court and not  12 make misrepresentations.  13 What Mr. Brown did yesterday, which is going to  14 come out later, is lie to the jury with Dr. Egilman.  15 And what Mr. Richman just did is not be candid  16 with Your Honor regarding the testimony, because on the  17 very -- a few pages later, Ms. Leavitt is directly  18 asked where they purchased the Johnson's Baby Powder,  19 and she said, at the local grocery stores where we go  20 shopping.  21 So, for the -- for counsel to tell Your Honor  22 that the only place that she purchased was at a local  23 PX --  24 MR. RICHMAN: I never said that.  25 MR. SATTERLEY: Wait a second now.</p>
<p style="text-align: right;">Page 147</p> <p>1 we purchased it at the commissary or the PX."  2 And then she says: "And where was the  3 commissary or PX.  4 "Answer: It was in Sangley Point Naval  5 Station."  6 So the -- issue one is the undisputed testimony  7 from the witness is the products she purchased on base  8 was sourced from the United States. There is nothing  9 to dispute that in the record.  10 More importantly, Your Honor, the other  11 undisputed testimony is that on -- sometime in  12 September of 1967, Terry Leavitt's mother, Susan, and  13 her husband -- I believe his name was David -- moved to  14 the United States. They left behind Terry with Terry's  15 grandmother and a house helper.  16 So -- and they stayed there for another seven  17 months before Terry and the grandmother joined them  18 back in the United States.  19 I believe Terry's grandmother has passed and  20 also the housekeeper. So there will be absolutely no  21 testimony about the products that were used on Terry  22 during the time she was still in the Philippines that  23 her parents had moved to the United States.  24 So it would be utter and complete speculation  25 as to what was used on her, the frequency it was used,</p>	<p style="text-align: right;">Page 149</p> <p>1 MR. RICHMAN: I object. That's a  2 misrepresentation.  3 THE COURT: One at a time.  4 MR. RICHMAN: I never said that's the only  5 place, Your Honor. The entire time period was the  6 representation of the witness.  7 THE COURT: Let's -- plaintiff is speaking now.  8 MR. SATTERLEY: So for counsel to suggest to  9 this jury and to Your Honor that -- number one, that  10 the Korean talc is not at issue because she purchased  11 it at a PX and that she knew the actual source of how  12 it came to when, in fact, on page 20 of her deposition,  13 when directly asked by counsel, she said, "We purchased  14 it at the grocery store where we go shopping."  15 So that -- number one, that's inaccurate  16 representation.  17 MR. RICHMAN: Your Honor, I'm sorry. I would  18 just ask counsel to read the question because it does  19 clarify.  20 MR. SATTERLEY: "You mentioned that you -- that  21 you'd get the Johnson's Baby Powder at the  22 commissary (sic) after he was discharged from the  23 military in late March 1967. Where did you purchase  24 Johnson's Baby Powder?"  25 MR. RICHMAN: After late March 1967.</p>



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<p>1 MR. SATTERLEY: Counsel.</p> <p>2 THE COURT: Yeah, let's -- one at a time,</p> <p>3 please.</p> <p>4 MR. SATTERLEY: So my point is, Your Honor,</p> <p>5 Ms. Leavitt's going to be here to -- Susan Leavitt's</p> <p>6 going to be here to testify. She's going to testify</p> <p>7 that she purchased sometime at the PX, the Post</p> <p>8 Exchange, the military. Sometimes she purchased it at</p> <p>9 a grocery store. She's going to testify when they did</p> <p>10 and how they did it. All that's going to be -- she</p> <p>11 testified about it in her deposition. This expert --</p> <p>12 so there's no Sanchez issue at all. Sanchez related to</p> <p>13 the gang activities and the underlying facts that were</p> <p>14 never introduced and the testimony that was never</p> <p>15 introduced. Here, that -- the Sanchez case doesn't</p> <p>16 apply whatsoever. So she's going to testify about</p> <p>17 that.</p> <p>18 Everything he's raised is subject to</p> <p>19 cross-examination and the weight the jury may give to</p> <p>20 the testimony of -- of Ms. Leavitt's testimony.</p> <p>21 The -- certainly we can -- Your Honor is going</p> <p>22 to give an instruction that there's two ways to prove a</p> <p>23 fact: direct evidence and indirect evidence.</p> <p>24 And you -- I think Your Honor has already given</p> <p>25 preliminary instructions to that.</p>	<p>1 addressed by Mr. Satterley, is that, as of June of '67,</p> <p>2 Terry's mother and her husband moved to the</p> <p>3 United States. Since I have familiarized myself with</p> <p>4 the rules of California caselaw, a fact witness needs</p> <p>5 personal knowledge of the testimony -- or of events to</p> <p>6 give testimony about those. It is sheer and utter</p> <p>7 speculation as to what the babysitter may have been</p> <p>8 doing during the time that Terry is across the world</p> <p>9 from where her parents are. There's not going to be</p> <p>10 any evidence of -- from anyone with any personal</p> <p>11 knowledge as to what happened after September of 1967.</p> <p>12 The problem is, that Mr. Satterley seems to</p> <p>13 keep missing, is that these expert witnesses keep</p> <p>14 saying there's just this continuous use of the product</p> <p>15 from Korea from the date of her birth through 1968.</p> <p>16 And there's absolutely no factual basis to substantiate</p> <p>17 that. And that is our issue.</p> <p>18 THE COURT: I understand the arguments that</p> <p>19 have been made here. I haven't yet heard actually what</p> <p>20 he's going to say. And what he's going to say is</p> <p>21 what -- and I will instruct the jury -- that his</p> <p>22 statements about the depositions are not evidence and</p> <p>23 the jury will have to decide whether, in fact, when</p> <p>24 these people testify, it is. And there's an</p> <p>25 instruction I give at the end of the case in which the</p>
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<p>1 And Ms. Leavitt's going to testify that her --</p> <p>2 I think it was her father and other family members did</p> <p>3 this activity on Terry also, and that it's her</p> <p>4 understanding and belief, because she instructed them</p> <p>5 to do so, that that -- that the powder was done when</p> <p>6 she wasn't there.</p> <p>7 So -- and the jury, Your Honor, may sustain</p> <p>8 objections when she comes, but to totally prevent an</p> <p>9 expert from giving opinions regarding this testimony</p> <p>10 is, I think, not well founded based upon the law in</p> <p>11 California.</p> <p>12 And Ms. Clancy says she's putting on</p> <p>13 Ms. Leavitt.</p> <p>14 I don't know.</p> <p>15 Do you have anything to add to that argument?</p> <p>16 MS. CLANCY: No. I agree with Mr. Satterley.</p> <p>17 MR. RICHMAN: So just in response, Your Honor,</p> <p>18 I have never stated there was not a small period of</p> <p>19 time that she may have claimed she bought a powder at a</p> <p>20 grocery store. What I stated to the Court was that,</p> <p>21 from the date of her birth and through March of 1967,</p> <p>22 the undisputed testimony was that she bought the</p> <p>23 product on base which came from the United States.</p> <p>24 There's no dispute about that fact.</p> <p>25 Moreover, which is also in dispute and was not</p>	<p>1 jury considers whether something has been established</p> <p>2 or not with regard -- that an expert relies on.</p> <p>3 So all of that's sort of a -- a later problem.</p> <p>4 The arguments that you raise right now are all</p> <p>5 appropriate matters for cross-examination. I'm not</p> <p>6 going to preclude him from expressing an opinion, and</p> <p>7 you can go at him going forward.</p> <p>8 I haven't heard actually what he's going to</p> <p>9 say, and I want to hear that. If he says something</p> <p>10 that you think he -- that there's no basis in the</p> <p>11 record to do it, I'll consider that. But what I am</p> <p>12 hearing is is he's going to tell based on what he</p> <p>13 understands from her deposition and he's going to draw</p> <p>14 some conclusions about it. And that may or may not be</p> <p>15 borne out by the evidence.</p> <p>16 So I'm not going to issue a ruling right now</p> <p>17 that precludes him from going there.</p> <p>18 MR. RICHMAN: And that's fine. I just -- to</p> <p>19 clarify the last point, I think -- or ask the Court to</p> <p>20 consider, because we're going to have to probably</p> <p>21 revisit this with this witness. It's not that she</p> <p>22 doesn't say it in her deposition, it's that she has no</p> <p>23 basis for saying it, and that now this witness cannot</p> <p>24 regurgitate something that she will not be able to say</p> <p>25 under any Rule of Evidence.</p>

<p style="text-align: right;">Page 154</p> <p>1 THE COURT: And that is -- that is why I am 2 going to instruct the jury that he's explaining what 3 the basis of his opinion is. His summary of the 4 deposition is not admissible testimony at all. The 5 jury is going to have to decide when that individual 6 testifies what is there and decide if that supports his 7 opinion. 8 MR. RICHMAN: Thank you, Your Honor. 9 THE COURT: Let's take a break while we can. 10 MR. ASHBY: I have one other issue. I hadn't 11 made a Kennebec objection. It had to do with documents 12 that Dr. Longo said he had reviewed for historical 13 testing regarding chrysotile. I had asked him at his 14 deposition about that. I had asked him to cite those 15 documents for me. He could not do that at the 16 deposition. He said he would withdraw his testimony if 17 he couldn't find those documents. He offered to 18 collect those documents for me and give them to me, 19 which he never did. That was the basis of my Kennebec 20 objection, is that I am now in a position where he's 21 testified about documents he's seen that show 22 historical testing of chrysotile, yet at his deposition 23 he was unable to disclose those documents to me, 24 offered, volunteered to collect those documents for me 25 to provide them but never did. Now I'm hearing it at</p>	<p style="text-align: right;">Page 156</p> <p>1 document to know whether or not it's relevant at all to 2 this case and the exposures in this case, because as 3 you know, there are -- there's Chinese talc, there's 4 Italian talc, there's Vermont talc, and there's Korean 5 talc. And for me to know whether or not these are 6 documents that are relevant to this case, that may have 7 been relevant to some other case certainly, or somebody 8 else may have asked him about it, it's only fair for me 9 to see those documents when he says to me that there 10 are documents that support this position. 11 And he cited -- he cited -- in his report he 12 cites there's 95 documents. So I asked him, of those 13 95 documents you're citing, which ones are the 14 chrysotile documents that support your opinion? And he 15 could not do it. He said he would collect those for 16 me, and he did not do it. 17 So I'm put in this very difficult position now. 18 It's not unlike when Dr. Hopkins was on the stand and 19 the objections constantly were, what's the document 20 that supports it? 21 THE COURT: Let me see the deposition testimony 22 you're referring to before you ask him. 23 MR. SATTERLEY: And the disclosure here, 24 Your Honor, where I incorporated Lanzo, Anderson, 25 Ingham.</p>
<p style="text-align: right;">Page 155</p> <p>1 trial and I'm incapable of cross-examining him on the 2 documents. 3 MR. MAIMON: I think if you look at the 4 deposition transcript, what Dr. Longo said is I have 5 been deposed countless times for Johnson &amp; Johnson, 6 I've identified the documents before in prior 7 depositions by Johnson &amp; Johnson, and by Mr. Ashby's 8 firm, of him and that he relies on the list of 9 documents that he has produced and these documents are 10 on the list. And he doesn't -- I don't believe he has 11 to sit there at a deposition and identify document by 12 document if it's been produced in anticipation of his 13 deposition, if it's -- if it's there, and if he's been 14 deposed upon it, countless times and gone through the 15 documents with Johnson &amp; Johnson. 16 MR. SATTERLEY: I believe the disclosure of the 17 case incorporated by reference, his prior testimony 18 from the Lanzo case and from these other cases so that 19 we have more than adequate notice and these list of 20 reliance lists, he's been cross-examined ad nauseam. 21 MR. ASHBY: The problem, if anyone puts 22 themselves in my shoes, is when he's tells me he's seen 23 documents regarding chrysotile in products, and as I 24 explained at the deposition and Mr. Maimon and I got 25 into a disagreement about is, I need to see the</p>	<p style="text-align: right;">Page 157</p> <p>1 THE COURT: Before you go there, I want to hear 2 first what the testimony is. 3 Mr. Ashby. 4 You know what we're going to do? Go look for 5 it now. I want to take a break right now. Before we 6 call the jury back in, I'll look at this issue. 7 Let's go off the record. 8 (Recess taken.) 9 (Afternoon Session) 10 (Whereupon, the jury having entered the 11 courtroom, the following proceedings were held:) 12 THE COURT: Before we were on the break, there 13 was an objection to Dr. Longo who was referring to some 14 testimony of plaintiff's mother, who will be a witness 15 in this case. 16 I'm overruling the objection at this point, but 17 I want to instruct you that the expert is permitted to 18 tell you what assumptions he's making in reaching his 19 conclusions. 20 You will be asked at the end of the case to 21 decide whether those assumptions are supported by the 22 actual evidence. So his statement summarizing the 23 depositions are not evidence in this case. You hear 24 the actual testimony and decide if it supports the 25 opinion.</p>

<p style="text-align: right;">Page 166</p> <p>1       <b>A. Yes.</b></p> <p>2       Q. And, to the extent that that talc was</p> <p>3 anthophyllite you explained the inability of the SEM to</p> <p>4 distinguish, is that also consistent with your testing</p> <p>5 of the Johnson &amp; Johnson products?</p> <p>6       <b>A. It would be.</b></p> <p>7       Q. And you found chrysotile in the tissue as well;</p> <p>8 correct?</p> <p>9       <b>A. Yes, sir.</b></p> <p>10      Q. And is that consistent with your review of the</p> <p>11 documents?</p> <p>12      <b>A. Yes, it is.</b></p> <p>13      MR. ASHBY: Object. Move no strike,</p> <p>14 Your Honor, based on what we talked about.</p> <p>15      THE COURT: There is a motion to strike on the</p> <p>16 documents. I'm going to reserve ruling on that subject</p> <p>17 to our discussions.</p> <p>18 BY MR. MAIMON:</p> <p>19      Q. And is it also consistent with your review of</p> <p>20 the Cyprus or Imerys documents, Dr. Longo?</p> <p>21      <b>A. It is.</b></p> <p>22      Q. Now, based upon your review of the materials in</p> <p>23 this case, is there any other documented or confirmed</p> <p>24 significant asbestos exposure that Terry Leavitt has</p> <p>25 had aside from her use of Johnson's Baby Powder for the</p>	<p style="text-align: right;">Page 168</p> <p>1       Q. Now, I have one final question for you,</p> <p>2 Dr. Longo. And first of all --</p> <p>3 Two questions.</p> <p>4       <b>A. It's a lie.</b></p> <p>5       THE COURT: Never a trust a lawyer who says he</p> <p>6 has one final question.</p> <p>7       MR. SATTERLEY: On both sides.</p> <p>8       THE COURT: You can pick a side.</p> <p>9 BY MR. MAIMON:</p> <p>10      Q. Is your methodology, when you talked about with</p> <p>11 the sensitivity, is it capable of identifying</p> <p>12 14 asbestos fibers per gram of talc?</p> <p>13      <b>A. No, sir. That's impossible, as we sit here</b></p> <p>14 <b>today.</b></p> <p>15      Q. And is any methodology that you're familiar</p> <p>16 with capable of identifying asbestos in talc at the</p> <p>17 level of 14 fibers per gram?</p> <p>18      <b>A. No. We have probably the lowest sensitivity of</b></p> <p>19 <b>any of the labs that I know. We're right -- hovering</b></p> <p>20 <b>around 2500. We're talking almost two orders of</b></p> <p>21 <b>magnitude lower than that. I'm not aware of anything</b></p> <p>22 <b>that can do that.</b></p> <p>23      Q. Of all the opinions that you've given us been</p> <p>24 to a reasonable degree of scientific certainty?</p> <p>25      <b>A. Yes, sir.</b></p>
<p style="text-align: right;">Page 167</p> <p>1 use on her?</p> <p>2      MR. DEJARDIN: Objection. Foundation. First</p> <p>3 part. Or "after the side" -- or "aside."</p> <p>4      THE COURT: Let me -- let me figure out. I'm</p> <p>5 going to sustain the objections. First of all, I don't</p> <p>6 know what foundation or what basis of where we're going</p> <p>7 on this.</p> <p>8      MR. MAIMON: Sure.</p> <p>9 BY MR. MAIMON:</p> <p>10      Q. You told us that you reviewed Ms. Leavitt's</p> <p>11 deposition?</p> <p>12      <b>A. Yes.</b></p> <p>13      Q. You reviewed her mother's deposition; correct?</p> <p>14      <b>A. Yes, sir.</b></p> <p>15      Q. You reviewed answers to interrogatories talking</p> <p>16 about where she lived and where she went to school?</p> <p>17      <b>A. Yes, sir.</b></p> <p>18      Q. And based -- and did -- and based upon that,</p> <p>19 have you been able to identify, based on your review of</p> <p>20 the materials in this case, any other asbestos --</p> <p>21 confirmed or documented significant asbestos exposure</p> <p>22 aside from the Johnson's Baby Powder that you already</p> <p>23 told us about?</p> <p>24      <b>A. No. I could not find any evidence of any</b></p> <p>25 <b>outside exposure other than the Johnson's Baby Powder.</b></p>	<p style="text-align: right;">Page 169</p> <p>1      MR. MAIMON: Thank you.</p> <p>2      Those are all the questions I have, Your Honor.</p> <p>3      THE COURT: Cross-examination?</p> <p>4      MR. ASHBY: Thank you, Your Honor.</p> <p>5      Can I have a second to clear this out,</p> <p>6 Your Honor?</p> <p>7 CROSS-EXAMINATION BY MR. ASHBY:</p> <p>8      Q. Good afternoon, Dr. Longo.</p> <p>9      <b>A. Good afternoon, sir.</b></p> <p>10      Q. I have not seen you since your deposition. I</p> <p>11 hope you've been well.</p> <p>12      <b>A. I'm trying to.</b></p> <p>13      Q. You talked a little bit about industrial</p> <p>14 hygiene earlier, and I think you said you attended some</p> <p>15 seminars maybe on it and maybe you spoke at some of</p> <p>16 them; is that what you said?</p> <p>17      <b>A. I've taught at industrial hygiene conferences</b></p> <p>18 <b>to certified industrial hygienists. I've published in</b></p> <p>19 <b>industrial hygiene journals. I have been -- I have</b></p> <p>20 <b>been asked to give talks on our research on industrial</b></p> <p>21 <b>hygiene, yes, sir.</b></p> <p>22      Q. What you did say, though, is you're not a</p> <p>23 certified industrial hygienist; correct?</p> <p>24      <b>A. No, sir, I'm still not.</b></p> <p>25      Q. You've never taken the test to be a certified</p>



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1 industrial hygienist?

2 A. No, sir, I haven't.

3 Q. You -- you're not a geologist, either; correct?

4 A. No. I don't have a degree in geology.

5 Q. You're not a mineralogist as well?

6 A. I don't have a degree in mineralogy. We have

7 to -- I have to do a lot of that in the arena of

8 asbestos, but I don't have a degree in it.

9 Q. I -- what my question was is are you a

10 mineralogist? Is that "yes" or "no"?

11 A. Well, it's a little difficult to answer

12 questions like that "yes" or "no," so I would have to

13 say "yes and no."

14 Q. Do you have a Ph.D. in mineralogy?

15 A. That I do not have.

16 Q. The first time that you personally ever

17 analyzed what you know to be a Johnson & Johnson talcum

18 powder product was in 2017?

19 A. January of 2017, yes, sir.

20 Q. And you're aware, however, that the testing of

21 cosmetic talc for the presence of asbestos has gone on

22 for decades; right?

23 A. Yes, sir.

24 Q. You, on the other hand, first started testing

25 cosmetic talc only after being contacted by law firms

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1 for the plaintiffs in asbestos litigation; right?

2 A. That is true.

3 Q. You never -- you've never tested cosmetic talc

4 when you weren't being paid to do it by lawyers for the

5 plaintiffs?

6 A. That is true.

7 Q. The only time you've tested talcum powder is

8 for plaintiffs lawyers suing for money in litigation;

9 right?

10 A. I guess eventually that's what happens, yes,

11 sir.

12 Q. You mentioned some work for some government

13 agencies. I think you talked -- did you talk about --

14 did you mention NASA today?

15 A. I did not.

16 Q. No, you did not. Okay.

17 A. Did you want me to?

18 Q. No. You don't have to. You usually say that

19 you can't talk about it; right?

20 MR. MAIMON: Objection, Your Honor.

21 "Can't talk about."

22 THE WITNESS: No, I talk about NASA. That's

23 the work we did on their space x-ray telescope where we

24 were doing microsurgery, actually drilling holes to

25 help connect chips because of -- et cetera, et cetera.

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1 I can't talk about the Department of Defense stuff;

2 otherwise, I'm going to have to kill you.

3 MR. ASHBY: I didn't catch that. What did he

4 say?

5 MR. SATTERLEY: Don't repeat it. Don't repeat

6 it.

7 THE WITNESS: Only since it's on the record.

8 THE COURT: The Court will note everyone is

9 laughing and we hope it was a joke.

10 THE WITNESS: It was a joke.

11 I think I'd get killed if I said that.

12 BY MR. ASHBY:

13 Q. None of that work, though, had anything to do

14 with talcum powder; right?

15 A. No. It wasn't talcum powder, but all this

16 research we've done over the years helps us understand

17 how to really analyze for microparticles and

18 microfibers. So we're not just a -- we're just not a

19 testing lab. We have all these scientists that we can

20 make progress on this. So we use things that we have

21 used for talcum powder. But, no. No government agency

22 has come to us and said, please test this talcum

23 powder.

24 Q. Dr. Longo, you've done this a few times. You

25 know how this works. We're going to try and get you

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1 out of here as fast as you can.

2 I would appreciate it if you answer my

3 questions.

4 MR. ASHBY: I'll ask the Court to either

5 admonish the witness or move to strike the testimony to

6 the extent it was more than a "yes" or "no."

7 THE COURT: I'm not going to strike that

8 answer, but I will -- let's try to keep your answers

9 succinct, sir.

10 THE WITNESS: Sorry, Your Honor.

11 THE COURT: Go ahead.

12 BY MR. ASHBY:

13 Q. You never published any papers relating to

14 talc; true?

15 A. That's true.

16 Q. None of the work you've talked about with the

17 jury in this case has ever been submitted for peer

18 review; true?

19 A. That is correct.

20 Q. You're being compensated for your time here

21 today; true?

22 A. That is correct.

23 Q. And you've told me at your deposition in

24 November that you've only ever talked about your data

25 with respect to cosmetic talc when MAS has been

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1 compensated for it; right?

2 **A. We've only ever talked about it?**

3 Q. You've only ever talked about it when MAS is

4 being compensated for it.

5 **A. I've only testified at trial when -- when -- so**

6 **my company can send a bill, yes, sir.**

7 **Q. And you're the president of your lab, and it's**

8 **called MAS; right?**

9 **A. Yes, sir.**

10 **Q. You own 75 percent of MAS; true?**

11 **A. That is correct.**

12 Q. You opened MAS in February of 1988?

13 **A. Opened the doors, yes, sir.**

14 Q. And you had some discussions with Mr. Maimon

15 about the \$30 million number.

16 Do you recall that?

17 **A. I do.**

18 Q. And you said you hadn't -- that wasn't personal

19 to you, you didn't make that 30 million personally is

20 what you said; right?

21 **A. That is correct.**

22 **Q. But what you've testified to in the past is**

23 **that over the past 30 years MAS has billed over**

24 **30 million for legal consultation, depositions, work**

25 **evaluation, and trial testimony on behalf of**

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1 **plaintiffs. Right?**

2 **A. That is correct.**

3 Q. Not long after opening the doors at MAS, you

4 were running an ad in which you were soliciting

5 business; correct? Are you familiar with this ad?

6 **A. I've been shown it many times in the last**

7 **30 years.**

8 Q. It's in the National Asbestos Council; right?

9 In that magazine?

10 **A. Yes, sir. 1989. It's a classic.**

11 MR. ASHBY: May I approach, Your Honor?

12 THE COURT: You may.

13 BY MR. ASHBY:

14 Q. I've handed you DX12204.

15 Do you recognize that document?

16 **A. I do.**

17 Q. And is this the ad that you had published in

18 the trade magazine for the National Asbestos Council?

19 **A. Yes, sir, it is.**

20 Q. All right.

21 MR. ASHBY: Your Honor, can I publish?

22 MR. MAIMON: No objection.

23 THE COURT: You may publish.

24 (Whereupon, Defendant's Exhibit DX12204 was

25 marked for identification.)

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1 BY MR. ASHBY:

2 Q. That's you on the right there; right?

3 **A. How did you guess?**

4 Q. George Yamate on the left there?

5 **A. Yes, sir.**

6 Q. You told us -- or you told me at your

7 deposition in the past one of the ways you've explained

8 this is that there was a price competition in the TEM

9 community and you wanted to show that you had the best

10 TEM lab at the time; is that right?

11 **A. That's correct.**

12 Q. But what you didn't do for showing that you're

13 the best TEM lab in the country is you didn't -- you

14 were not wearing a lab coat there; right?

15 **A. No. That would be a suit.**

16 Q. Are you wearing a lab coat?

17 That's not a lab coat.

18 **A. That's not a lab coat.**

19 Q. Are you in a lab?

20 **A. No, sir, I'm not.**

21 Q. You're in a courtroom; right?

22 **A. Yes.**

23 Q. Another way you've explained it in the past is

24 that you were trying to get the message across that MAS

25 was a great lab for clearance samples and if there was

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1 ever a dispute, you'd be willing to stand up and defend

2 your data in court; right? That's the other way you

3 explained it; is that true?

4 **A. I think both those explanations go together.**

5 Q. I'm not suggesting they're not. I'm just

6 asking if those are the two explanations.

7 MR. MAIMON: Objection.

8 BY MR. ASHBY:

9 Q. So let me back up. The other way for -- or

10 maybe the similar way you've explained this is that you

11 were trying to get the message across that MAS was a

12 great lab for clearance samples and if there was ever a

13 dispute you'd be willing to stand up and defend your

14 data in court; right?

15 **A. That's all part of the same reason why we did**

16 **that.**

17 Q. Okay. But you've never actually testified in

18 court to defend your clearance data; right?

19 **A. I have not. That's because we're so good.**

20 Q. Before you got heavy into consulting in

21 cosmetic talc litigation, about 35 to 40 percent of

22 MAS's business came from consulting?

23 **A. Yes, sir.**

24 Q. But in the past year, it has increased to about

25 70 percent of your business; right?



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1       **A. That is correct.**  
2       Q. And that jump from 40 to 70 percent is due  
3 exclusively to the more work you have in talc  
4 litigation; right?  
5       **A. That is correct.**  
6       Q. You've testified as an expert in asbestos  
7 litigation since the 1980s; right?  
8       **A. I think the first case was 1989 or 1990.**  
9       Q. Since you ran that ad that we still have up,  
10 30 years ago you've given about 2500 to 3,000  
11 depositions; true?  
12       **A. Since about 1989, 1990, when it started in**  
13 **about 1991 and '92, that's true.**  
14       Q. On average, now, you have testified at least  
15 once a week, every week for the last five years?  
16       **A. Yes. That is correct.**  
17       Q. Even more recently, you're having one to two  
18 depositions per week; right?  
19       **A. Yes, sir.**  
20       Q. And 95 percent of the time that you're in  
21 court, it's for plaintiffs attorneys in asbestos  
22 litigation; true?  
23       **A. That is true.**  
24       Q. In fact, you've been designated as an expert  
25 several thousand times by plaintiffs lawyers suing in  
litigation?  
2       **A. With 3500 depositions, that math works.**  
3       Q. You said recently that you think every  
4 plaintiff's attorney in the country lists you in any  
5 type of asbestos litigation?  
6       **A. Sadly, that's true. They don't even call me.**  
7 **They just list my name.**  
8       Q. Okay. I'm going to -- you switched subjects  
9 now. You talked a little bit about -- or you talked  
10 with Mr. Maimon a little bit about the concentration  
11 method and TEM, so we can talk about microscopes. You  
12 can put that aside, the ads.  
13       Would you agree with me that in the 1970s, TEM  
14 analysis was expensive, the TEM microscope itself?  
15       **A. In 1970 dollars, I would agree.**  
16       Q. And you've stated there were very few, if any,  
17 TEMs in commercial laboratories that had the  
18 appropriate technology to perform accurate trace  
19 amphibole contaminant analysis; right?  
20       **A. That's correct.**  
21       Q. You've actually -- some of the work you've done  
22 when you have worked for defendants you did some work  
23 for a company called Scotts; right?  
24       **A. Yes, sir.**  
25       Q. And Scotts was a company that took vermiculite,

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1 and they did something called "exfoliation" to it.  
2       Can you explain what "exfoliation" is?  
3       **A. Sure. Vermiculite comes in plates, sort of**  
4 **stacked up, thin mineral plates and has some water in**  
5 **there. And if you take it through a furnace at about**  
6 **1250 degrees Farenheit and rotate it through, it'll**  
7 **expand that water and make it pop like popcorn so it's**  
8 **exfoliated.**  
9       That gives it its insulation capabilities  
10 because it lets air get into the structure between the  
11 leaves. So you can go from what looks like a pound of  
12 the rock and exfoliate that and it would be this big  
13 (indicating).  
14       Q. And Scotts, because it had vermiculite in it,  
15 their product had some trace asbestos contamination;  
16 right?  
17       **A. That's correct.**  
18       Q. And they hired you to defend them in court to  
19 say that the trace contamination in their product was  
20 extremely low and couldn't cause harm to a consumer;  
21 right?  
22       **A. Yes and no. I never say any -- that any of**  
23 **this causes harm to anybody. I'm just a measurement**  
24 **guy.**  
25       And, yes, based on the application of that  
fertilizer, encapsulated, spread with a spreader in the  
2 trace amounts, I don't -- it was my opinion that there  
3 was no significant exposure, which is different than  
4 taking a powder that's loose and pouring it on your  
5 body every day. So there's -- you can't -- it's apples  
6 and oranges, those two types of scenarios.  
7       Q. So if you -- I gave you some binders there.  
8 You took a look at them earlier when you first got in.  
9       **A. Which one do you want me to get?**  
10       Q. It's Volume II.  
11       MR. ASHBY: Can you see if Mr. Maimon has a  
12 copy?  
13       **THE WITNESS: I don't see volumes.**  
14       MR. MAIMON: How about the tab number?  
15       MR. ASHBY: Why don't I take a look?  
16       **THE WITNESS: This one's much fatter than**  
17 **yours.**  
18       MR. ASHBY: We're starting skinny.  
19       **THE WITNESS: There's more down here. Oh, 202.**  
20 BY MR. ASHBY:  
21       Q. Right. There you go.  
22       So if you could turn to just that first tab.  
23 It says "April 10, 2015 report"?  
24       Is that the report that you prepared for the  
25 Scotts Company?

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<p style="text-align: right;">Page 182</p> <p>1 THE COURT: Are you looking at the exhibit book</p> <p>2 or the transcript book?</p> <p>3 MR. ASHBY: It's called -- it says "Longo Cross</p> <p>4 Outline Exhibits, Volume II."</p> <p>5 THE COURT: Okay. Which tab again?</p> <p>6 MR. ASHBY: The first one.</p> <p>7 THE COURT: All right. That's easy.</p> <p>8 <b>THE WITNESS: Yes, sir. This is one of them.</b></p> <p>9 BY MR. ASHBY:</p> <p>10 Q. Right. This is one of the -- this is a report</p> <p>11 that you issued to the Court in some case that Scotts</p> <p>12 was in?</p> <p>13 <b>A. I believe so.</b></p> <p>14 Q. If you could turn to the -- page 6. Actually,</p> <p>15 turn -- it's going to be marked -- it says "005" at the</p> <p>16 bottom.</p> <p>17 Do you see that?</p> <p>18 <b>A. I have 005.</b></p> <p>19 MR. ASHBY: So it says DX11219.0005 for</p> <p>20 everybody following along.</p> <p>21 Your Honor, can I publish his report?</p> <p>22 THE COURT: Any objection?</p> <p>23 MR. MAIMON: No objection.</p> <p>24 THE COURT: All right. You may publish.</p> <p>25 (Whereupon, Defendant's Exhibit DX11219 was</p>	<p style="text-align: right;">Page 184</p> <p>1 Q. However, in the 1970s, there were no ATEM bulk</p> <p>2 sample vermiculite/amphibole accepted and validated</p> <p>3 protocols for this type of analysis."</p> <p>4 Do you see that?</p> <p>5 <b>A. I do.</b></p> <p>6 Q. And then -- then you say, "Another problem in</p> <p>7 the 1970s was that there were very few, if any, ATEMs</p> <p>8 in commercial laboratories that had the appropriate</p> <p>9 technology to perform accurate trace amphibole</p> <p>10 contaminant analysis."</p> <p>11 That's what you said when you were working on</p> <p>12 behalf of Scotts; right?</p> <p>13 <b>A. Yes, sir. I still stand by that statement.</b></p> <p>14 Q. I'm not suggesting you don't.</p> <p>15 So you -- you talked a little bit about -- you</p> <p>16 can take that down now, John.</p> <p>17 And you're familiar with the J4-1 Method. You</p> <p>18 talked about that a little bit, too; right?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. And you know that if you reviewed the J4-1</p> <p>21 Method that the J4-1 Method on its face says one of the</p> <p>22 reasons that TEM wasn't being used for J4-1 was that</p> <p>23 there was -- it had to do with the expense of the</p> <p>24 equipment eliminated -- eliminated it as a routine</p> <p>25 method; right?</p>
<p style="text-align: right;">Page 183</p> <p>1 marked for identification.)</p> <p>2 MR. ASHBY: John, can you pull up page -- on my</p> <p>3 copy, 0005.</p> <p>4 BY MR. ASHBY:</p> <p>5 Q. So it says -- you start -- you wrote this;</p> <p>6 right?</p> <p>7 <b>A. Yes, sir.</b></p> <p>8 Q. And what you wrote was, "One of the criticisms</p> <p>9 leveled at Scotts of this early testing for both bulk</p> <p>10 and air sample analysis was the use of PLM, XRD, and</p> <p>11 PCM for the quantification of possible amphibole</p> <p>12 contamination and exposure in light of these</p> <p>13 instruments' detection limits and specificity for</p> <p>14 amphibole asbestos."</p> <p>15 Do you see that?</p> <p>16 <b>A. I do.</b></p> <p>17 Q. And you said, "This would be a valid criticism</p> <p>18 if these analyses were performed today because of the</p> <p>19 validation and routine use of analytical transmission</p> <p>20 electron microscopes for this type of vermiculite</p> <p>21 amphibole contaminant analysis."</p> <p>22 Do you see that?</p> <p>23 <b>A. Yes, sir.</b></p> <p>24 Q. You still agree with that; right?</p> <p>25 <b>A. Yes, I do.</b></p>	<p style="text-align: right;">Page 185</p> <p>1 <b>A. That's what it states.</b></p> <p>2 Q. It's one of the reasons. There were a couple,</p> <p>3 but that's one of the reasons.</p> <p>4 <b>A. That's what it states.</b></p> <p>5 Q. And you know that J4-1 was the industry</p> <p>6 standard in the United States in the 1970s, right, for</p> <p>7 the analysis of cosmetic talc for the presence or</p> <p>8 absence of asbestos; right?</p> <p>9 <b>A. Yes. I think it was a trade organization</b></p> <p>10 <b>standard.</b></p> <p>11 Q. And you know that the UK Cosmetic Trade</p> <p>12 Association, so the United Kingdom's Cosmetic Trade</p> <p>13 Association, in the 1970s was called the British</p> <p>14 Toiletry Preparation Federation; right?</p> <p>15 <b>A. That is correct.</b></p> <p>16 Q. And the British Toiletry Prep -- Toiletry</p> <p>17 Preparation Federation developed its own industry</p> <p>18 standard for testing of talc; right?</p> <p>19 <b>A. I believe so.</b></p> <p>20 Q. And the British -- and I'm going to call it</p> <p>21 "TPF." The British TPF method was XRD; right?</p> <p>22 <b>A. I think so. I'd have to look at it to verify</b></p> <p>23 <b>that.</b></p> <p>24 Q. Why don't you look at the binder there that I</p> <p>25 have. It's Volume I. If you'd go to Tab K.</p>

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1 STATE OF CALIFORNIA )  
2 ) ss.  
3 COUNTY OF ALAMEDA )  
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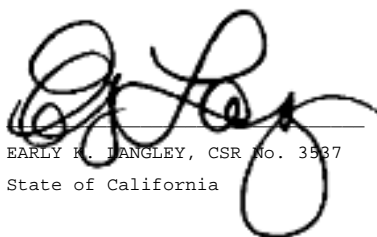
5 I, EARLY K. LANGLEY, do hereby certify:

6 That foregoing proceedings were held in the  
7 above-entitled action at the time and place therein  
8 specified;

9 That said proceedings were taken before me at said  
10 time and place, and was taken down in shorthand by me,  
11 a Certified Shorthand Reporter of the State of  
12 California, and was thereafter transcribed into  
13 typewriting, and that the foregoing transcript  
14 constitutes a full, true and correct report of said  
15 proceedings that took place;

16 IN WITNESS WHEREOF, I have hereunder subscribed my  
17 hand on February 7, 2019.

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EARLY K. LANGLEY, CSR No. 3537  
State of California